THE PERMANENT JUDICIAL COMMISSION
OF THE GENERAL ASSEMBLY
OF THE PRESBYTERIAN CHURCH (U.S.A.)

NEIL W. BROWN
Complainant

v. **Remedial Case 207-11**

PRESBYTERY OF SAN DIEGO
Respondent

This is a remedial case of original jurisdiction that has come before this commission on a complaint by Neil W. Brown, a minister, against the Presbytery of San Diego. This complaint was properly filed with the Synod of Southern California and Hawaii (Book of Order, D-6.0500b). The synod permanent judicial commission willfully refused to meet and hear this case. This commission then received a request to assume original jurisdiction (D-5.0100e). In October, 1994, this commission instructed the synod to order its permanent judicial commission to meet and hear the case. This instruction was delivered to the synod while it was in session. Nevertheless, the synod did not order its permanent judicial commission to meet, and the permanent judicial commission did not meet. This commission then assumed original jurisdiction.

Pursuant to Book of Order, D-6.1200, this commission finds that the complaint was timely filed, that this commission has jurisdiction, that the complainant has standing to file the case, and that the complaint states a claim upon which relief can be granted.

History

The basic facts are not in dispute. The presbytery had experienced financial problems. Complainant was the executive presbyter of the presbytery, beginning August 1, 1988. As time

passed, the financial situation became worse. In response to the financial crisis, on February 16, 1993, the presbytery created two committees. Committee A was asked to study the financial situation of the presbytery and to make appropriate recommendations. The work of that committee and its recommendations are not the subject of this remedial case.

The task of Committee B was to ". . . evaluate the competencies and actions of related staff and officers with a view toward actions which may range from vindication to dismissal or anything in between." On June 23, 1993, the chair of Committee B hand-delivered a notice to the complainant that stated ". . . as a result of the manner in which the executive presbyter managed the financial affairs of his office, there exists a significant loss of confidence and faith in his ability to unify and lead this presbytery." Based on this conclusion,

". . . Committee "B" recommends termination procedures be instituted concerning the executive presbyter, in accordance with the Book of Order and personnel policies of the presbytery. As an alternative, the executive presbyter is invited to submit his resignation in accordance with G-9.0705."

The same notice scheduled a hearing, pursuant to Book of Order, G-9.0705, for June 25, just two days after the notice was hand delivered. The notice advised complainant that he could

"...appear personally with counsel to present reasons and evidence why the employment relationship should not be terminated. The hearing shall follow the rules of evidence in the Rules of Discipline, Chapter IX (D-9.0000). A record of the hearing will be made."

At complainant's request, the hearing was postponed until July 13, 1993, at which time complainant appeared with counsel. There was no verbatim record of the hearing, only the secretary's minutes. The presbytery did not call any witnesses or produce any evidence at the

hearing. The complainant offered an explanation of the financial crisis from his perspective. Following this hearing Committee B reaffirmed its recommendation.

On July 15, 1993, the recommendation of Committee B was presented to the presbytery for action. After extensive discussion, the presbytery voted 72-62 to adopt the recommendation to institute termination procedures. Thereafter, on July 26, 1993, the presbytery council, acting on behalf of the presbytery, voted to approve recommendations of the personnel committee regarding a severance proposal. This complaint followed.

Decision

This commission has carefully considered the testimony of the witnesses and the voluminous documentary evidence presented by the parties. At the outset, we express no opinion whether the presbytery was justified in attempting to sever its relation with complainant. That issue is not before us in the facts of this case. It is certain that a governing body may sever its relation to any executive for a variety of reasons, which may include a desire for leadership in a different direction or for a change in style or tenor of leadership. We have determined and the parties have agreed that there are three issues in this case:

- whether the presbytery followed the Book of Order regarding termination;
- whether the presbytery followed its own policies regarding termination; and
- whether complainant entered into a settlement of the dispute by accepting checks.

(1) Issues related to the Book of Order are as follows:

Although standards of due process under our Book of Order are not the same as under the U.S. Constitution (Gaddie v. Presbytery of Whitewater Valley, Minutes 1993, Part I, p. 174), G-

9.0705 provides procedural requirements for the termination of the relation between staff persons, including executives, and their governing bodies.

Despite complainant's urgings, we do not read into G-9.0705 the substantive due process requirements of G-9.0505d, relating to administrative commissions. There are significant differences between an administrative commission and a governing body. The nature of an administrative commission justifies a higher procedural standard.

A committee under Book of Order, G-9.0705, is not required to present evidence or testimony to support its findings and recommendation. The burden is on the staff person to show why the relation should not be terminated. Such a proceeding is not a trial. At the hearing, complainant did present reasons and evidence why the relation should not be terminated.

Book of Order, G-9.0705, requires four procedural safeguards in the process of terminating the relation with governing body staff. These include the following:

- A written notice given to the staff person stating the reasons for recommending the termination and offering the staff person an opportunity to resign or to request a hearing.
- If requested, have a hearing at which the staff person may appear personally with counsel to respond to the findings of the committee and present reasons and evidence why the relation should not be terminated.
- Additionally, the hearing shall afford safeguards as in cases of process, following the rules of evidence in the Rules of Discipline.
- A record shall be made of the hearing, which shall become a part of the record in the event of a judicial complaint following the final action of the governing body.

Based on the testimony and other evidence in the case, we hold that the presbytery failed to provide the procedures demanded by the Book of Order.

In this case, the written notice to the complainant simply stated the conclusion, ". . . as a result of the manner in which the executive presbyter manages the financial affairs of his office, there exists a significant loss of confidence and faith in his ability to unify and lead the presbytery." This bare conclusion, without any of the findings to support it, calls into question complainant's handling of the financial matters of the presbytery. One of the safeguards to be included under G-9.0705 should be a statement of the findings, that is, the reasons for the conclusion. This statement should be included in the written notice and should be given at a time and in a manner that would give complainant a real opportunity to respond.

The result of the committee's process was to imply that complainant was responsible for the financial problems of the presbytery. In this case, the reasons for termination implied misconduct. The evidence reflected that the complainant was not notified of these reasons before the hearing conducted by Committee B and, thus, was unable to respond to or meet the assertions of misconduct implied against him. Under these facts, G-9.0705 required Committee B to provide the complainant with sufficient notice of the misconduct suggested.

This case is, thus, unique on its facts. Section G-9.0705 should not be construed as requiring notice of detailed findings before the required hearing, without an express or implicit allegation of misconduct.

(2) Issues related to presbytery's policies are as follows:

Because we have found for complainant on the first issue, it is unnecessary for us to decide complainant's claim that the presbytery failed to comply with its own procedures.

(3) Issues related to settlement are as follows:

The presbytery argues that by endorsing the checks paid pursuant to the severance proposal, complainant has accepted a settlement of this case. This contention is without merit. Complainant endorsed each check "endorsed under protest." He did not participate in or agree to, either explicitly or implicitly, the severance proposal. He has insisted throughout that he was and now is the executive presbyter of the presbytery.

Findings

(1) We find that the presbytery failed to follow the procedures of the Book of Order in their termination procedures.

(2) We further find that the purported termination was invalid.

(3) We further find that the complainant remains the executive presbyter of the Presbytery of San Diego.

Order

It is hereby ordered that Neil W. Brown, complainant, be allowed to resume his duties as executive presbyter and that he be paid compensation at his usual rate from July 15, 1993, less any amounts subsequently paid to him by the presbytery.

It is further ordered that the stated clerk of the Presbytery of San Diego report this decision to the presbytery at its first meeting after receipt, that the presbytery enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly; and

It is further ordered that the stated clerk of the Synod of Southern California and Hawaii report this decision to the synod at its first meeting after receipt, that the synod enter the full decision upon its minutes, and that an excerpt from those minutes showing entry of the decision be sent to the Stated Clerk of the General Assembly. (Book of Order, D-8.1900)

Ruby Rodriguez, member of the commission, was present during the trial of this case, took part in a portion of the deliberations, but left because of a family emergency and did not vote on the decision and order.